IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 618 (M/S) OF 2006

Ajay Sharma @ Ajay Uniyal,

Son of Shri Krishna Devi Uniyal,

R/o Village Gujrada Maan Singh, Pargana Parwadoon, Tehsil & District Dehradun .....Petitioner

Versus

1. State of Uttaranchal, through Secretary, Awas, Civil Secretariat, Uttaranchal, Dehradun,
2. Competent Authority/Incharge Officer,
   Urban Land (Ceiling and Regulations) Act, Dehradun.....Respondents

Mr. Rajendra Dobhal, Advocate, counsel for the petitioner.
Standing Counsel for the respondents

Dated 3.7.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for quashing of the order dated 12.4.2006 passed the Competent Authority/Incharge Officer, Urban Land (Ceiling and Regulations) Act, Dehradun-respondent no.2.

Briefly stated, the ceiling proceedings were initiated and the order was passed on 29.11.1982 declaring the surplus area. The predecessor of the petitioner preferred an appeal No. 148 of

1984 Shiv Lal and others Vs. State of Uttar Pradesh before the District Judge, Dehradun under section 33 of Urban Land (Ceiling and Regulations) Act, 1976. The appeal was dismissed as having abated on the following observations :-

"As the possession has not yet been taken over by the State of U.P. or any other authority as mentioned above of the land in dispute, all proceedings arising out of impugned order dated 29.11.1982, passed by the Competent Authority, Urban Land Ceiling, Dehradun in Ceiling Case No. 181/1982 Return No. 3237 State Vs. Ram Prakash, Shiv Lal and Sohan Lal shall stand abated.

The application 18C2 is decided accordingly."

The petitioner along-with other co-sharer filed application on 22.9.2002 and 20.4.2004 before the Competent Authority for recording their names, but the Competent Authority on 12.4.2004 has rejected the same under section 10 (5) of Urban Land (Ceiling and Regulation) Act, 1976, directing the petitioner and other co-sharer of land in dispute to hand over the possession of land in dispute to Tehsildar concerned, within 30 days, otherwise the proceedings under section 10(6) of Urban Land (Ceiling and Regulations) Act, 1976 will be initiated against the land holders.

Since the Urban Land (Ceiling and Regulation) Act 1976, has been repealed, the matter is covered by the judgment of the

Apex court in the case Pt. Madan Swaroop Shrotiya Public Charitable Trust vs. State of U.P. 2000 AIR SCW 1882. The Apex court has held that since there is no evidence that the State had taken possession over the surplus land, the present proceedings have to be abated and are hereby abated under section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999. Observations of the Apex Court are quoted as under :-

2. The Act has since been repealed by the urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act 15 of 1999). The legislature of the State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 by a resolution as required by Article 252(2) of the Constitution. The repealing Act has since come into force in the State of U.P. with effect from 18.3.1999. the appellant has filed a supplementary affidavit dated 31.10.1999 in this Court and on that basis, it has been prayed that the present proceedings be abated. The State has not filed any reply to this affidavit.

3. Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under :

"4. Abatement of legal proceedings.-All proceedings relating to any order made or purported to be made under the principle Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shal abated ;

Provided that this section shall not apply to the proceedings relating to Sections 11,12, 13 and 14 of the principal Act insofar as such proceedings are

related to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority."

4.In the counter-affidavit not a word has been said about the possession of the surplus land. In fact, it is maintained by the appellant that the possession is still with the appellant who was also ranted an interim order regarding "status quo."

5.Since there is nothing on record to indicate that the State had taken possession over the surplus land, the present proceedings have to be abated and are hereby abated under section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

In view of the aforesaid findings of the District Judge that the petitioner is still in possession, the writ petition is allowed, the respondents are directed to substitute the name of the petitioner and pass the appropriate order in accordance with law.

Writ petition is allowed. No order as to costs.

3.7.2006 *(Rajesh Tandon, J.)*